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Preparatory Committee on the Establishment of an International Criminal Court
16 March-3 April 1998

Report of the Working Group on the Composition and Administration of the Court

The Working Group recommends to the Preparatory Committee the text of the following articles concerning the composition and administration of the Court as a first draft for inclusion in the draft consolidated text of the convention for an international criminal court:

Article 29.	Organs of the Court (A/AC.249/1998/WG.7/CRP.2/Add.1 and Corr.1);
Article 29 *bis*.	Judges serving on full-time basis (A/AC.249/1998/WG.7/CRP.2/Add.2 and Corr.1);
Article 30.	Qualification and election of judges (A/AC.249/1998/WG.7/CRP.2/Add.4);
Article 31.	Judicial vacancies (A/AC.249/1998/WG.7/CRP.2 and Corr.1);
Article 32.	The Presidency (ibid.);
Article 33.	Chambers (ibid.);
Article 34.	Independence of the judges (A/AC.249/1998/WG.7/CRP.2/Add.2 and Corr.1);
Article 35.	Excusing and disqualification of the judges (ibid.);
Article 36.	Office of the Prosecutor (A/AC.249/1998/WG.7/CRP.2/Add.3 and Corr.1);
Article 37.	The Registry (A/AC.249/1998/CRP.2/Add.5);
Article 37 *bis*.	Staff (A/AC.249/1998/WG.7/CRP.2/Add.3 and Corr.1);
Article 38.	Solemn undertaking (A/AC.249/1998/WG.7/CRP.2/Add.1);
Article 39.	Removal from office (A/AC.249/1998/WG.7/CRP.2/Add.2 and Corr.1);
Article 39 *bis*.	Disciplinary measures (ibid.);
Article 40.	Privileges and immunities (A/AC.249/1998/WG.7/CRP.2/Add.1 and Corr.1);
Article 41.	Salaries, allowances and expenses (ibid.);

98-08715 (E) 310398

Article 42. Working languages (ibid.);

Article 43. Rules of Procedure and Evidence (A/AC.249/1998/WG.7/CRP.2/Add.5);

Article 43 *bis*. Regulations of the Court (ibid.).

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Preparatory Committee on the Establishment of an International Criminal Court
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Report of the Working Group on Enforcement

The Working Group recommends to the Preparatory Committee the text of the following articles concerning enforcement as a first draft for inclusion in the draft consolidated text of the convention for an international criminal court:

Article 86.	Role of States in enforcement [and supervision] of sentences of imprisonment (A/AC.249/1998/WG.5/CRP.4);
Article 86 *bis*.	Enforcement of the sentence (ibid.);
Article 86 *ter*.	Supervision and administration of sentence (ibid.);
Article 86 *quater*.	Transfer of the person upon completion of sentence (ibid.).

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Preparatory Committee on the Establishment of an International Criminal Court
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Draft report of the Preparatory Committee

1. The General Assembly, in its resolution 50/46 of 11 December 1995, decided to establish a preparatory committee for the establishment of an international criminal court to discuss the major substantive and administrative issues arising out of the draft statute prepared by the International Law Commission in 1994 and to draft texts with a view to preparing a widely acceptable consolidated text of a convention for an international criminal court as a next step towards consideration by a conference of plenipotentiaries.

2. The Preparatory Committee on the Establishment of an International Criminal Court met from 25 March to 12 April and from 12 to 30 August 1996, during which time it discussed further the issues arising out of the draft statute and began preparing a widely acceptable consolidated text of a convention for an international criminal court.[1]

3. In its resolution 51/207 of 17 December 1996, the General Assembly decided that the Preparatory Committee would meet in 1997 and 1998 in order to complete the drafting of a text for submission to the diplomatic conference of plenipotentiaries.

4. The Preparatory Committee met from 11 to 21 February, from 4 to 15 August and from 1 to 12 December 1997, during which time it continued to prepare a widely acceptable consolidated text of a convention for an international criminal court.[2]

5. The General Assembly, in its resolution 52/160 of 15 December 1997, accepted with deep appreciation the generous offer of the Government of Italy to act as host to the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court and decided to hold the Conference in Rome from 15 June to 17 July 1998.

6. In the same resolution, the General Assembly requested the Preparatory Committee to continue its work in accordance with Assembly resolution 51/207 and, at the end of its sessions, to transmit to the Conference the text of a draft convention on the establishment of an international criminal court prepared in accordance with its mandate.

7. The Preparatory Committee met from 16 March to 3 April 1998 and had before it a consolidated text compiled by the Bureau and coordinators on the basis of all the texts that it had worked out or that had been submitted to it (A/AC.249/1998/L.13). The compilation

98-09385 (E) 020498

was the product of an informal meeting held in Zutphen, the Netherlands, from 19 to 30 January 1998 and was used as a basis for the work of the Committee at that session.

8. At its 56th meeting, on 16 March, the Preparatory Committee decided to conduct its work through working groups on the following subjects: procedural matters (chaired by Ms. Silvia Fernández de Gurmendi); composition and administration of the court (chaired by Mr. Lionel Yee); establishment of the court and relationship with the United Nations (chaired by Mr. Rama Rao); applicable law (chaired by Mr. Per Saland); on *ne bis in idem* (chaired by Mr. John Holmes); jurisdictional issues (chaired by Mr. Erkki Kourula); and enforcement (chaired by Mrs. Molly Warlow). The final clauses were considered at the informal meetings under the chairmanship of Mr. Adriaan Bos.

9. At its 57th meeting, on 1 April, the Preparatory Committee adopted the reports of the working groups mentioned above.

10. At its --- meeting, on 3 April, the Preparatory Committee adopted the text of a draft statute on the establishment of an international criminal court (A/AC.249/CRP.6-18) and the draft final act (A/AC.249/1998/CRP.19).

11. In its resolution 52/160, the General Assembly requested the Secretary-General to prepare the text of the draft rules of procedure of the Conference, to be submitted to the Preparatory Committee for its consideration and recommendations to the Conference, with a view to the adoption of such rules by the Conference in accordance with the rules of procedure of the General Assembly, and to provide for consultations on the organization and methods of work of the Conference, including rules of procedure, prior to the convening of the last session of the Committee. At its --- th meeting, on 3 April, the Preparatory Committee adopted the draft provisional rules of procedure of the Conference prepared by the Secretary-General (A/AC.249/1998/CRP.3) pursuant to resolution 52/160.

12. At its --- th meeting, on --- April, the Preparatory Committee took note of the draft organization of work prepared by the Secretariat and decided to transmit it to the Conference.

13. At its --- th meeting, on --- April, the Preparatory Committee agreed to transmit to the Conference the following documents:

(a) Draft statute for the establishment of an international criminal court;

(b) Draft final act;

(c) Draft provisional rules of procedure of the Conference;

(d) Draft organization of work.

14. In its resolution 52/160, the General Assembly requested the Secretary-General to invite non-governmental organizations, accredited by the Preparatory Committee with due regard to the provisions of section VII of Economic and Social Council resolution 1996/31 of 25 July 1996, and in particular to the relevance of their activities to the work of the Conference, to participate in the Conference, along the lines followed in the Committee, on the understanding that participation meant attending meetings of its plenary and, unless otherwise decided by the Conference in specific situations, formal meetings of its subsidiary bodies except the drafting group, receiving copies of the official documents, making available their materials to delegates and addressing, through a limited number of their representatives, its opening and/or closing sessions, as appropriate, in accordance with the rules of procedure to be adopted by the Conference. On the basis of the list of non-governmental organizations compiled by the Secretariat with the assistance of the NGO Coalition for the Establishment of an International Criminal Court

(A/AC.249/1998/CRP.22), the Preparatory Committee decided that the non-governmental organizations listed therein should be invited to participate in the Conference in the manner set out in resolution 52/160.

15. At the 57th meeting, on 1 April, the representative of the Netherlands announced his country's candidacy of The Hague for the seat of the international criminal court.

16. Pursuant to paragraph 7 of resolution 51/207, the Secretary-General established a trust fund for the participation of the least developed countries in the work of the Preparatory Committee and the Conference. Guidelines were established for the administration of the fund. The Committee noted that the following Governments had made contributions to the fund: Belgium, Canada, Denmark, Finland, Netherlands, Norway, Sweden and United Kingdom of Great Britain and Northern Ireland. Thirty-three representatives from 18 States had thus far utilized the trust fund to facilitate their participation in the meetings of the Preparatory Committee during 1997 and 1998. The European Commission had awarded a grant to the trust fund, but owing to procedural difficulties, the transfer of the contribution had been delayed.

17. Pursuant to paragraph 7 of resolution 52/160, the Secretary-General also established a trust fund for the participation of other developing countries in the work of the Preparatory Committee and in the Conference. The Government of the Netherlands had made a contribution, which would be available to those developing countries requesting assistance to facilitate their participation in the Conference.

18. The Preparatory Committee expressed its deep appreciation to the Governments that had made contributions and to the European Commission for its award to the above-mentioned trust funds. The Committee noted that the General Assembly, in its resolution 52/160, called upon States to contribute voluntarily to the trust funds.

Notes

[1] See *Official Records of the General Assembly, Fifty-first Session, Supplement No. 22* (A/51/22).

[2] See the decisions taken by the Preparatory Committee at its session held from 11 to 21 July 1997 (A/AC.249/1997/L.5); decisions taken by the Preparatory Committee at its session held from 4 to 15 August 1997 (A/AC.249/1997/L.8/Rev.1); and decisions taken by the Preparatory Committee at its session held from 1 to 12 December 1997 (A/AC.249/1997/L.9/Rev.1).

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Preparatory Committee on the Establishment of an International Criminal Court
16 March-3 April 1998

Draft report of the Preparatory Committee

The following text should be inserted:

14 *bis*. Recognizing the need for efficient organization and effective coordination among organs of the Conference, the Preparatory Committee endorsed the suggestion that the Bureau members and all coordinators should meet informally prior to the Conference, together with the nominated President and the nominated Chairman of the Drafting Committee, to discuss such matters so as to ensure the effective organization of work and a smooth transition from the Preparatory Committee to the Conference in Rome.

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Report of the Working Group on Procedural Matters

The Working Group recommends to the Preparatory Committee the text of the following articles concerning procedural matters as a first draft for inclusion in the draft consolidated text of the convention for an international criminal court:

Part 5. Investigation and prosecution

Article 48. Information on national investigations or proceedings. Text as contained in document A/AC.249/1998/WG.4/CRP.1;

Article 49. Deferral of an investigation by the Prosecutor. Text as contained in document A/AC.249/1998/WG.4/CRP.1.

Part 6. The trial

Article 55. Place of Trial. Text as contained in document A/AC.249/1998/WG.4/CRP.12;

Article 62. Evidence. Text as contained in A/AC.249/1998/WG.4/CRP.2;

Article 63. Offences or acts against the integrity of the Court. Text as contained in document A/AC.249/1998/WG.4/CRP.3;

Article 64. Confidential information/Sensitive national security information

Option 1

Text as contained in document A/AC.249/1998/WG.4/DP.39;

Option 2

Text as contained in document A/AC.249/1998/WG.4/DP.20, annex;

Option 3

Text as contained in document A/AC.249/1998/WG.4/DP.26 and Add.1;

Article 65. Quorum and judgement. Text as contained in document A/AC.249/1998/WG.4/CRP.4, with the following correction:

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In paragraph 6 add the following bracketed words before the last sentence: [one dissent covering all dissenting opinions];

Article 66. Reparations to victims. Text as contained in document A/AC.249/1998/WG.4/CRP.5 and Corr.1, plus the following corrections:

In footnote [1], the beginning of the second sentence, should read as follows:

"For the purposes of defining 'victims' and 'reparations', reference may be made ...";

Article 67. Sentencing. Text as contained in document A/AC.249/1998/WG.4/CRP.6.

Part 8. Appeal and review

Article 73. Appeal against judgement or sentence. Text as contained in document A/AC.249/1998/WG.4/CRP.7, with the following addition:

Add the following bracketed subparagraph (c) after the present paragraph 1(b):

"[(c) the Prosecutor shall not be entitled to appeal against the conviction but he or she shall be entitled to draw the attention of the Appeals Chamber to a point of law which in his or her opinion requires interpretation or clarification.]"

Article 73 *bis*. Appeal against interlocutory decisions. Text as contained in document A/AC.249/1998/WG.4/CRP.8 with the following additions:

1. Add the following footnote [1] to the title of the article:

"[1] Further consideration should be given to the question of what decisions could be appealed under this article."

2. Add the following bracketed subparagraph (e) to the text of paragraph 1:

"[(e) when the majority of members of a Trail Chamber shall be of the opinion that the order involves a controlling issue as to which there is substantial ground for difference of opinion and that immediate appeal from the order may materially advance the ultimate conclusion of the trial and a majority of the judges of the Appeals Chamber, at their discretion, agree to hear the appeal.]"

Article 74. Proceedings on appeal. Text as contained in document A/AC.249/1998/WG.4/CRP.9;

Article 75. Revision of conviction or sentence. Text as contained in document A/AC.249/1998/WG.4/CRP.10;

Article 76. Compensation to a suspect/accused/convicted person. Text as contained in document A/AC.249/1998/WG.4/CRP.11, with the addition of the words "convicted person" at the end of the title.

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Preparatory Committee on the Establishment of an International Criminal Court
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Recommendation adopted by the Committee on the Rights of the Child

Cooperation with other United Nations organs and other competent bodies

The Committee on the Rights of the Child,

Welcoming the progress made by the Preparatory Committee on the Establishment of an International Criminal Court in preparing a draft consolidated text of a convention on the establishment of an international criminal court,

Welcoming also General Assembly resolution 52/160 of 15 December 1997, in which the Assembly decided, *inter alia*, that the United Nations Conference of Plenipotentiaries on the Establishment of an International Criminal Court would be held in Rome from 15 June to 17 July 1998, with a view to finalizing and adopting a convention on the establishment of such a court,

Emphasizing the importance of ensuring that, in creating a permanent mechanism for the prevention and punishment of serious crimes of concern to the international community as a whole, the statute of the international criminal court duly take into account the need to protect the rights of children, both as victims and possible perpetrators of such crimes, in accordance with the principles and provisions set forth by the Convention on the Rights of the Child,[1]

Considering that, in this respect, special attention should be devoted to the issues of definition of war crimes, age of criminal responsibility, aggravating and mitigating circumstances of the crimes and the protection of the rights of the child within the court's jurisdiction,

Recalling that, under article 43, paragraph 1, of the Convention on the Rights of the Child, the Committee was established for the purpose of examining the progress made by

[1] General Assembly resolution 44/25, annex.

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States parties in achieving the realization of the obligations undertaken under the Convention,

1. *Recommends* to all States parties to and signatories of the Convention on the Rights of the Child[1] to operate, in the Preparatory Committee on the Establishment of an International Criminal Court and at the United Nations Conference of Plenipotentiaries on the Establishment of an International Criminal Court, with a view to ensuring that the provisions of the statute of the international criminal court be in line with the principles and provisions of the Convention on the Rights of the Child with respect to the various aspects of the protection of children's rights;

2. *Also recommends* that special attention be devoted, in this context, to the rights of the child in the areas of definition of war crimes, age of criminal responsibility, aggravating and mitigating circumstances of the crimes and the protection of the rights of the child victim within the jurisdiction of the court.

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Preparatory Committee on the Establishment of an International Criminal Court
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Report of the Working Group on the Establishment of the Court and Relationship with the United Nations

The Working Group recommends to the Preparatory Committee the text of the following articles concerning establishment of the Court and relationship with the United Nations (Part 1), Assembly of States Parties (Part 10 *bis*) and financing of the Court (Part 10 *ter*), as well as the Final Act:

Article 1.	The Court (A/AC.249/1998/WG.8/CRP.1/Add.1)
Article 2.	Relationship of the Court with the United Nations (A/AC.249/1998/WG.8/CRP.1 and Corr.1)
Article 3.	Seat of the Court (A/AC.249/1998/WG.8/CRP.1/Add.2)
Article 4.	Status and legal capacity (A/AC.249/1998/WG.8/CRP.1 and Corr.1)
Article 90 *bis*.	Assembly of States Parties (A/AC.249/1998/WG.8/CRP.1/Add.3)
Article A.	Payment of expenses of the Court (A/AC.249/1998/WG.8/CRP.1 and Corr.1)
Article B.	Funds of the Court (A/AC.249/1998/WG.8/CRP.1 and Corr.1)
Article C.	Voluntary contributions (A/AC.249/1998/WG.8/CRP.1 and Corr.1)
Article D.	Assessment of contributions (A/AC.249/1998/WG.8/CRP.1 and Corr.1)
Article E.	Annual audit (A/AC.249/1998/WG.8/CRP.1 and Corr.1)
Final Act (A/AC.249/1998/WG.8/CRP.1/Add.1)	

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Report of the Working Group on the Establishment of the Court and Relationship with the United Nations

Corrigendum

1. In the first line, add the words "the Preamble and," after "the text of".
2. Add to the list, before "Article 1":

   Preamble (A/AC.249/1998/WG.8/CRP.1/Add.4)

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